PATTERNS OF ECONOMIC COOPERATION BETWEEN SOCIALIST AND DEVELOPING COUNTRIES*

A SOCIALIST (HUNGARIAN) VIEWPOINT

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I. Introduction

i. General principles and considerations

1. Hungary is a medium-developed country with a socialist economic structure, member of the CMEA and very much foreign trade oriented. More than 30% of her GNP goes and comes through foreign trade processes. Her international economic policy is characterized by a strong reliance on economic cooperation with the socialist countries, the developed capitalist countries and the third world (for the figures see ii *infra*). This is declared and claimed by the Foreign Trade Policy as formulated legally by the Foreign Trade Act of 1974 (Preamble, § 16). And it is projected by the Foreign Trade Policy as part of the general national economic policy and national economic plan. In this context the economic relations with the developing countries have a very important role. Chapter VII of the Sixth Five-Year Plan (1981–1985) on the "International economic cooperation and foreign trade" calls – in general, and also with regard to developing

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This paper is, unfortunately, the first attempt in the Hungarian legal writing to give a somewhat comprehensive picture on the subjectmatter claimed by the title. It is partly due to this circumstance that the author could reach in this presentation modest academic value only. It is a roughly destilled and often uneven survey on the legal forms and patterns as shared and applied by the contract practice of Hungary as a state and of the Hungarian enterprises doing foreign trade. There was so far hardly any activity in the Hungarian legal literature in the title-relared issues (except those few writings listed in the sources *infra*, which occasionally have references also to problems discussed here, the most writings in the Sources are, however, from the literature of economics). However – due to the importance of the issue and due also to the challenge of the ICOLEA Ife conference – under the management of this author promoted bymore Hungarian institutions (Academy of Sciences, universities) quite recently a *Research Project* (listed under this title in the Sources *infra*) has been started on the *legal* problems of the economic cooperation between Hungary and the developing countries. This paper relies, besides the author's own research, on the first output of this Project, actually on the semi-finished research reports of the authors. Their kind assistance and consent to use their raw manuscripts and research informations should be thanked most sincerely. The responsibility for the many flaws and shortcomings of this presentation, however, is born by the author only.

countries, – for higher forms and degree of international division of labor, for that matter for the promotion of direct industrial and more sophisticated production cooperation between the domestic and foreign firms. This has to be backed by an expanded better payment and credit structure aiming at a modern and more competitive economy and freign trade (§ 39). (Section 41 claims specifically that "the exsisting economic relations with the developing countries must be developed, with special efforts for the expansion of cooperation forms in production and development projects" (§ 41, para. 2).

As member of the CMEA naturally Hungary supports the thesis incorporated into the renewed CMEA Charter and into the CMEA Complex Programme, namely "the importance and readiness to develop economic links with all countries, irrespecitve of their social or state system", and that in this respect the CMEA member states lay special emphasis on economic cooperation with the developing countries with special regard to their special interests (CMEA Charter Preamble, Complex Programme Part I, ch. 1 par. 3).

Hungary also adheres to many international legal instruments (some of them will be discussed hereafter: II) which lay special emphasis on the special importance of the economic cooperation with the developing countries. Many of them call for a new structure of the world economic order – in favor of the developing countries and a balanced world economy. This is – and should be more – reflected by the relevant international legal instruments, as stated by the message of the theory of international economic law outlined by Professor *Blagojevic*. But as an example let us cite here just one basic legal commitment of this nature, *viz.* art. 8 of the UN Charter of Economic Rights and Duties of States. Hungary shares this declaration: "States should cooperate in facilitating more rational and equitable international economic relations... in harmony with the needs and interests of all countries, *especially developing countries* (emphasis added), and take appropriate measures to this end."

What measures Hungary could and did take, is probably modest (part of it, especially the legal patterns and institutions applied and supported in the contract practice, will be depicted here). But so is the size, economic magnitude and capacity of the country.

2. Hungarian writing in economics (as illustrated partly in the Sources *infra*) – in contrast to the little in legal science – has been working for long on the special importance and special challenges inherent in the present day development of the economic cooperation with the developing countries. Leading economists realized the epoch-making change in the world economy also in this respect *(Bognár)*. Many writings call for a new type of international division of labor in this sphere *(e.g. Farkas)*. The philosophy of the new approach is, very roughly, this. Hungary's foreign trade interests can be and are statisfied to a substantial degree by the economic relations with the developing countries. Hungary supports their efforts for development and economic independence. To benefit more from these relations and to contribute more to these efforts foreign

trade has to go beyond traditional commodity trading. While aiming at a more efficient and competitive Hungarian economy, special efforts must be made to develop and strengthen cooperation forms (long-term cooperation contracts, delivery of complex systems, export of skill and technology) which fit in an optimum way into the development programs of the developing countries.

Thereby the gain of both sides can be mutually strengthened. As for the developing countries this may more favorably contribute to the creation of their own industries, to the development of the infrastructure, and to the growth of skill and technology, – basic values they need *(Rába)*. The further progress of the scientific-technical revolution puts the developing countries in a better position, as claimed by many, to be more efficient in their use and exploitation of the achievements of modern science and technology *(Ádám)*.

ii. Some data

Some data should briefly indicate how really the picture looks like and to what magnitude Hungary's foreign trade actually amounts.

3. As to the structure of Hungary's foreign trade with the developing countries, namely of what commodities, services and values this structure is composed, the growing importance of complex systems (turn key projects) and technology transferring skill, machines and materials is apparent. This is evidenced by the Hungarian International Statistical Yearbook of 1981. The share of complete turn key plants and other installations, machines and components, processed materials (metallurgy, chemical industry) amounts close to 70% of the whole Hungarian export to the developing countries! Agricultural products, food and consumption goods represent hardly more than 30%. The number of those Hungarian experts who extend scientific, economic or technical knoweledge and experience in the developing countries independently from delivered investment projects is also constantly growing (it was in 1979 in all likelihood above thousand); the same applies to the number of those who come to Hungary to acquire higher scientific or technical knoweledge (it was 2500 in 1979, see *Geist – Ravasz*).

On the other side of the balance, *i.e.* in the import from the developing countries the composition of the structure of the goods shows a reverse picture. Agricultural products (fruits, industrial plants, soybean, coffee, tea, cacao etc.) take close to 70%, only the rest is industrial products.

4. The main industries represented in the Hungarian export in percentage to developing countries are: complete systems (installations, turn key projects), which are by far the first in the list, machines and equipment of general nature, means of transportation (trains, buses etc.), telecommunication, electric bulbs and related products, medical instruments,measuring instruments, pharmaceuticals etc. In the agricultural "basket" meat is predominant in various forms and nature.

5. The main trading partners of Hungary according to the statistical picture are – besides practically all developing countries – Iran, Irak,

Algeria, Kuwait, Libia, Siria, Nigeria, Libanon, Brasil (the latter especially in the Hungarian soybean and coffee import).

6. As to some general statistical data: Hungary's export was in 1980 in million forints (the figures in parentheses relate to 1960) to the socialist countries 154.864 (7.327), to developed capitalist countries 98.624 (2.253) and to the developing countries 27.513 (678); the import growth was approximately the same. Calculated by different exchange rates, the figures would show a similar ratio also in dollar value; the above export to the developing countries must be roughly around 800 million US dollars. As can be seen, the growth is especially strong in the non socialist scene. If we look at the ratio in percentage the import was

from	1960	1980	growth rate
socialist countries	70	50	−28
developed capitalist countries	24	40	+67
developing countries	6	9.2	+53

The export sturcture is roughly the same.

This data show a growing openness of the Hungarian economy towards non socialist countries, and also towards the developing countries (reckoned on the basis of the said absolute figures – the turnover in 1980 was 40 times as big as in 1960).

As to Nigeria the Hungarian export was 0.43 billion forints in 1976, representing 1.6 billion in 1980; our import was generally lower (0.2 and 0.37 respectively).

II. The applied patterns, their main legal features

7. In this chapter those patterns – legal institutions channelling economic cooperation – are discussed, which are shared and applied in Hungarian practice. Which are practiced mainly or also with regard to the cooperation with developing countries. Some of them will be just listed or hardly more, because they are generally known. They will be mentioned to this extent in order to indicate that they make part also of the Hungaryan legal scheme in this field, or to emphasize those of their elements which to the benefit of the developing countries Hungary too would like to see strengthened. Others will need more explanation.

To make some order in the treatement of the institutions to be discussed, this organization seems justified: i. Multilateral schemes in state lavel cooperation, ii. Non-governmental multilateral legal schemes, iii. Bilateral state level cooperation schemes, iv. Domestic state (public) schemes promoting cooperation in this field, v. Enterprise level cooperation as the main stream of the actual transactions. This organization is meant to help us start from more general legal forms in order to end up with some real feeling of the real practice of the actual concrete patterns through which Hungary's cooperation with the third world is realized.

i. State level cooperation: multilateral schemes

8. When Hungary proposed at the UN an agency to promote world-wide progressive development of the law of international trade (UNCITRAL), this was motivated especially by the consideration, that the interests and participation of the developing countries in the shaping of this progressive development needs the UN initiative and framework. Pursuant, in the "Report of the Secretary-General" (listed in the Sources *infra*) – based on a study of Professor *Schmitthoff*, commented *inter alia* also by Dr. *T. O. Elias* from Nigeria, Prof. *Gy. Eörsi* from Hungary, Prof. *W. L. Reese* from the US – there is a full picture of all those multilateral legal schemes which have actual function in international trade. This summary picture here – with some more recent additions – would just stress the circumstance, that the schemes in question have this or the other channeling role in Hungary's economic cooperation with the developing countresi.

9. One of the "more recent addition" is that of the role of GATT to which Hungary acceded in 1973 (ratifying instrument: Decree no. 23 of 1973 of the Council of Ministers). This has an important bearing on Hungary's international economic relations in general, and on those with the GATT-adhering developing countries in particular. The general values and legal features of GATT (MFN-clause, reduction of custums, dumping policies etc.) need not to be stressed and discussed here. What we would like to emphasise here is the full support of Hungary to the functioning and more efficient extension of the Generalized System of Preferences, GSP (for this see in the Sources *Lovassyné Bán, Mádl – Vékás, Ustor*). Thereby in 1972 the Contracting Parties – upon the relevant decisions of the UNCTAD agreements – have been encouraged to extend preferences (non-reciprocated benefits) to the developing countries so that the developed countries shall not be authorized to claim the same under the MFN-clause, disinvoking or waiving thereby the MFN-clause in this context. This authorization was first for ten years. But the Tokyo Round agreements or conduct codes go now all along this line. This is also generally reflected by the socalled "Frame-work for Conduct of International Trade", and by the "enabling clauses" elaborated by the "framework" group (see Tokyo Round GATT Report and *Náray*). What, after all, Hungary has done in this respect will be seen below (iv). As to the adopted conduct-agreements Hungary has acceded to them by ratifying them correspondingly in 1980.

10. Hungary generally supports the initiatives of UNCTAD which are generally well known. This applies to the above already mentioned GSP initiated by UNCTAD, to the efforts concerning the Code of Conduct on Restrictive Trade Practices, and a Code of Conduct on Technology Transfer. The aim of these initiatives and Hungary's support thereto is the expectation that they will gradually materialize in a trade and technology-transfer practice more favorable to the developing countries than the existing ones. As to the Code on the Technology Transfer the socialist countries started, just as the Western sountries, with their own draft. The draft of the developing countries was put on the agenda. The position of Hungary

– and probably that of the other socialist countries – is to go into the merits and see what can be done (binding international code or directives, free transfer or sale although on non fully commercial basis, jurisdiction and applicable law-exclusively that of the receiving countries or other alternatives?).

As to the "South-North Conferences" Hungary's position tends to transscribe the principles of a new world economic order rather into bilateral commitments and schemes than into a multilateral convention. The historic responsibility and economic possibilities of the different countries are so different, that it is hardly possible to put all ways and means in one viable multilateral legal instrument. Also seems it likely that a useful participarion of the socialist countries would be favored by a better East-West cooperation in general and with regard to this issue in particular. It is such an important and confidence-claiming political responsibility, which, no doubt, can hardly materialize in more concrete forms and results without a more efficient peace and cooperation, i.e. *détente;* a new *lex mercatoria* in this field especially calls for a constructive *pax mercatoria et generalis.*

11. There is a group of other multilateral agreements, which have been existing for long time and are touching very much upon interests of the developing countries, and are now under constant reconsideration, just with regard to the said interests of the developing states.

This applies for example to the Bruxelles Convention of 1924 on See Transport (Bill of Lading), to which Hungary is a party, and which is very often an applied means in the transport contracts of the discussed parties. Upon the relevant UNCTAD initiatives, also with Hungary's support in the negotiations, the Convention has a chance to "go over" into a better version, better for the developing countries), *viz.* into the Hamburg-born (1978) new convention.

Mutatis mutandis the same can be said about the Hague Convention of 1964 on international sale (ULIS). With little chance to be accepted by the developing countries Hungary favored a new convention to be elaborated and drafted by UNCITRAL. This initiative riched its climax in 1980, when in Vienna the diplomatic conference (under the presidence of Hungary's representative, Prof. *Gy. Eörsi*) adopted the UNCITRAL Convention on international sale, which is now open for ratification. Although more sections of the Convention reflect a compromise between the interests of North and South rather than a clear domination of "Southern" interest, its value is still its openness to the considerations of the developing countries (see *Eörsi*). It might become a better legal framework than any others so far for the countries in question in sales contracts.

Sensitive issues are discussed in the industrial property organizations, so in the most important one, WIPO, to reformulate the philosophy underlying the existing Convention (the Paris Union Convention, to which Hungary acceded in 1909 and adheres to it now according to its Stockholm text of 1967, ratified by Law-Decree no. 18 of 1970). The problems are known.

The existing unions are based on the traditional commercial philosophy of equal treatment, contrasting to the very fact that as regards South and North the parties, as a rule, are anything than equal. So this principle has to be modified. The developing countries are justifiedly fighting for a better position repeatedly stated and formulated also by UNCTAD. Hungary will go along a substantial way in these efforts, as evidenced by the Nairobi conference (1980 – 1981) on the planned modification of the Stockholm text. Some new elements of the Nairobi draft: the developing countries shall receive 50% reduction as regards the fees; the priority period ahould be 50% longer in the case of nationals (applicants) from developing countries; the Union will undertake other measures to assist the developing countries in their development in this sphere (better legislation, documentation and information etc.).

12. Because they have a role in the discussed system of patterns, they channel very many forms and elements of economic cooperation, two types of other multilateral legal instruments, developed on intergovernmental level, should be mentioned.

a) One type of them are multilateral conventions very often used in Hungary's relations with the developing countries, *i.e.* to which both Hungary and the respective developing country are adhering.

Commercial arbitration is one field. Hungary is a member to both the European convention of 1961 (ratified by Law-Decree no. 8 of 1964) and the New-York Convention of 1958, on the recognition and enforcement of foreign arbitral awards (ratified in Hungary by Law-Decree no. 25 of 1962).

Bills of exchange and cheques are another field. The relevant Geneva conventions of 1930 and 1931 have been considered as important for Hungary's foreign trade transactions – also with regard to the developing countries, therefore Hungary acceded to them in the mid-sixties (ratification by Law-Decrees no. 1 and 2 of 1975).

Commodity agreements are the third field. They regulate very important elements of the trade of the commodity in question. They become important patterns of Hungary's cooperation with the developing countries as soon as both become member to such international intergovernmental cartels (*e.g.* the International Tin Agreement, the Fifth signed in Genf 1972, ratified in Hungary by Law-Decree no. 5 of 1977).

b) The second type includes those very much used or influential legal instruments, which the UN Economic Commission for Europe (ECE) has developed for vital transactions and development forms with regard to the developing countries. Hungary has not only participated in the elaboration of such general conditions, as for exemple the ECE General Conditions for the Supply and Erection of Plant and Machinery for Import and Export, but they are very often used as background instruments in the actual contract practice of Hungarian enterprises. Others are under preparation (*e.g.*, International Engineering Contracts Including Related Aspects of Technical Assistance), among others with Hungarian participation.

These general conditions (and those discussed *infra* ii) are of general nature, but in their special contract relation very characteristically used with regard to transactions with developing countries, accordingly they can be also taylored this way (that is why UNIDO is constantly) offering them to the developing countries (see *UNIDO, Guidelines* in the Sources *infra*). As to UNIDO's very recent initiatives – to promote faster and more beneficial technology-transfer by such institutions as the proposed International Institute of Industrial Technology, the Center for Joint Acquisition of Technologies and the International Patent Investigating Center – these initiatives found and surely will find positive support from the socialist countries (see *Osmann*).

ii. Non-governmental multilateral legal schemes

UNIDO's mentioned guidelines include several other general conditions, contract forms or uniforms customs, which are prepared and compiled by various non-governmental agencies. The list below (covering part of them) shows their nature (that they serve as important legal channels in the relations in question), while the fact that they are really very much used is generally well known. This applies also to the Hungarian contract practice.

13. Hungarian banks and other institutions are adhering to such payment and contractual instruments (very much applied by the firms) as those compiled by the International Chamber of Commerce (ICC): INCOTERMS, Uniform Customs and Practice for Documentary Credit, Uniform Customs and Practice for the Collection of Commercial Papers *(Mádl – Békás)*. The pragmatic value of these legal institutions is so overwhelming that, *e.g.*, many terms of the INCOTERMS became part of such an international egreement as the CMEA Convention of 1975/1978 on international sale called General Conditions on Delivery of Goods (§ 5 – 10). The Court of Arbitration and the Rules of Conciliation and Arbitration set up by ICC are also part of the legal schemes Hungary's practice is frequently resorting to.

14. The same applies to such UNIDO-Guidelines-listed contract forms as the various instruments prepared by FIDIC (Fédération Internationale des Ingénieurs-Conseils), *e.g.*: Conditions of Contract (International) for Works of Civil Engineering, Construction, Electrical and Mechanical Works (Including Erection in Site) with Forms of Tender and Agreement; International Model Form of Agreement Between Client and Consulting Engineer and International General Rules for Agreement Between Client and Consulting Engineer for Preinvestment Studies, for Design and Supervision of Construction Works (sources: recent FIDIC publications in The Hague with the respective title, and *UNIDO, Guidelines*). What should be added here is the circumstance that Hungary's enterprises have substantial activity in this sphere in the developing countries. These model forms and conditions serve more and more as contract-practice-guidelines shared by many countries' relevant professional associations also in the third world (as indicated by the said FIDIC publications

in India, Indonesia, Brasil, Iran, Jamaica, Kenya, Bangladesh, Bolivia, Ecuador etc). This is one of the reasons why Hungarian firms as parties to thusly drafted contracts are also users of these legal instruments.

15. There are, of course, many other legal, schemes functioning in this field and coming from non-governmental international institutions. Hungarian enterprises by virtue of their contract-autonomy will surely live up to theserules whenever this is justified by the actual economic cooperation in question. Let me mention just two examples. Hungary's coffee import deals – as indicated by the contract practice of the importers – come very often under the General Conditions of the European Coffee Association. The reason is simple: coffee is a special commodity, traded normally along the practice of the said conditions (as imposed or really freely stipulated law of the contract), and coffee comes from the developing countries, so here we have a special pattern of economic cooperation with the developing countries. As the second example with the same implications the Rules of the London Cacao Association can be mentioned, which have been applied also with regard the Nigerian cacao contracts of the Hungarian importers.

iii. Bilateral state level cooperation schemes

16. The most important non-enterprise-level regulatory and promoting structures (patterns) of Hungary's economic cooperation with the developing countries are the various bilateral agreements. As a rule and as generally recognized, their pragmatic value is more imminent and efficent than that of the multilateral schemes. Since in the socialist countries the state is so to say per definition more the master of or involved in the economic processes, state management of foreign trade is evidently more directly expressed and strongly reflected in the state's bilateral governmental commitments. Since, further on, in the developing countries too state management (planning, investments, control etc.) is a fairly strong element, stronger than in the developed free market economy countries, bilateral state agreements get a stronger function from this side too. The essence in this speciality of the bilateral agreements lies in all likelihood in this circumstance: besides issues regulated also in agreements with developed capitalist countries, in this sphere states go closer to the mikro-economic processes, very often down to individual (normally big) transactions and commitments.

If we look now at the bilateral intergovernmental agreeement practice (as evidenced by the many conventions, treaties and agreements Hungary has signed with practically all developing countries, see a good part of them in the *Bilateral Commercial Agreements*, an official publication of the Ministry of Foreign Trade, Sources *infra*), then the structure of these agreements can be considered as composed of these main types of instruments: general trade agreements; commodity turn-over agreements or protocols; economic, industrial and technical cooperation agreements; cooperation agreements in science and technology; working programs in

the same field; payment agreements; loan agreements; agreements on individual projects.

These types exist or can be projected as having more or less distinct features. However, it must be added, not all types are simultanously applied in every inter-state relationship. Partly because the relationship in question did not yet claim such a diversified legal structure (the degree and magnitude of cooperation did not yet go into real scientific cooperation, or no big individual bilateral investment deals have been envisaged), and partly because very frequently more types of agreements are combined in one general agreement. In this latter case this general agreement would cover many issues which in a more differenciated legal structure would come under different separate agreements. Let us mention just two examples: The agreement concluded with Brasil in 1961 is called "Commercial, payment and Economic Cooperation Agreement" and in fact handles elements of all title-indicated issues; whereas the agreement system with Algeria, Egypt, and Nigeria includes several agreements separately (long – term commercial agreements, industrial and technical cooperation agreements, cooperation agreements in science and technology, working programs to the latters). Thusly, the types of agreements often go over in one another. After all the draftig of agreements is shaped by the actual needs and circumstances and not by didactics of university textbook-writing. This does not question this organization here, which looks at the entirety of the agreements and projects the said agreement structure finally upon the basis of actual forms, variations and substance of the real contract practice. To identify the characteristic types and to present thereby a rational structure is here the more justified, because the title of this paper itself (in fact the Ife conference agenda) calls for identifyable patterns developed in the cooperation practices. Accordingly, the most important legal features of the different agreement types should be depicted briefly hereafter.

17. The general trade agreements lay the very general political background of how the states as general political entities will behave vis-a-vis each other in trade matters: promote and facilitate trade in general on mutually beneficial basis, grant MFN-treatement with specified exceptions (customs unions, CMEA-treatement, preferences extended by developing countries to developing countries etc.), re-export conditions, mutual assurance to issue the export and import licenses, the principle that the prices will be based on the worldmarket prices and competition conditions, specified customs exemption, the openness to commercial representations, support of tradepromoting activities (*e.g.*, fairs), support of sea transport and the use of habour facilities, acceptance of commercial arbitration in the field of enterprise contracts, granting of transit rights to the other party's commodities.

While these were the main elements of the traditional or general trade agreements [for evidence see, *e.g.*, the agreement with Libia (1975), Nigeria (1973), Peru (1968)], some of them referring also to the UNCTAD

General Principles (Libian agreement, Preamble), a few words must be said on their eventual commodity or quota provisions.

18. Commodity lists, quotas, quota-provisions are, as a rule, the essence of commodity turnover agreements or (as short-time instruments) protocols. Although more general trade agreements carry so-called preference-lists of specified commodities to be traded in the years to come, they are *de facto* or explicitly indicative only. *I.e.*, the "governments will, so go the relevant formulations, *endeavour*" to facilitate and support deals in the said commodities, but other goods too can be freely traded. Commodity agreements with strict restrictive quotas are in fact not part of the agreements system. As examples the Algerian general commercial agreement (1975, art. 3—5) and that with Irak (1975, art. 2) could be cited. The Irakian agreement forsees not only commodity lists, but also annual quotas fixed in so-called annual Commercial Plans; but, similarly to the Algerian agreement, the Irakian too claims, that the Commercial Plan "does not exclude deliveries beyond" cummodities, values and quantities listed therein.

19. Having set up the static background in the trade agreement, in the economic, industrial and technical cooperation agreements the states move into the arena of the actual dynamics of their international economy. By exploring, knowing and pursuing the needs of the domestic economy they would more closely specify what steps in what industry are specially needed, which industry has special potentials to meet the demands of foreign, *viz.* the other party. With this philosophy and assumptions the state would like to determine or influence the international (bilateral) economic processes so that they actually follow the course they would like to see realized.

These cooperation agreements, as a rule, would include the following main elements: *a)* the special emphasis of longterm cooperation of the economies of the respective countries; *b)* their obligation to do their best to enhance this process; Commitments that *c)* they will stimulate and commit in their respective ways the enterprises and organizations to realize this economic policy, *d)* that they will specify those fields and areas on which cooperation is most desirable, *e)* that they will specify the means they favour in these fields, such as: feasibility studies, development projects, technology transfer, supply of machinery, complete plants, technical information, financing procedures, mutual supplies of products, joint ventures or other closer contractual forms for the extension of more intensive enterprise cooperation (art II. of the cooperation agreement of 1979 with Nigeria, *e.g.*, specifies these fields and forms of cooperation: creation of industries, establishment of joint industrial, commercial and technical enterpises, training and exchange of experts, consulting services, feasibility studies, studies in geology, research, extension of scholarships, expositions, exchange of licenses and technical know-how, special big projects under separate agreements etc.); *f)* the legal pledge that the governments shall consider as quickly as possible requests made to them to recognize and license cooperation projects and contracts, *g)* sometimes

they will foresee and promote joint designs and projects to be realized with the participation of third countries (as, *e.g.*, claimed in art. II. of the Hungarian Egyptian cooperation agreement of 1975), *h)* a very general institution in the general governmental cooperation agreements is the establishing of joint commissions of the two governments to make the agreement reality: to undertake periodic reviews of the implementation of the agreement and the projects emanating therefrom, supervise and promote all activity to the fulfillment of the agreement, to suggest new dispositions or arrangements and to act as a general governmental facilitating generator in this field; *i)* The "protocols" or "agreed minutes" are those forms by which the joint commissions set the tasks and agreements for the period to come.

20. Cooperation agreements in science and technology – where not part of the former type of agreements – are focusing on the cooperation in scientific and technical activites, where the extension or exchange of scientific and technical expertise is not part of project or commodity deliveries.

Agreements in this field carry generally these elements: exchange of consultants and experts, study trips, scholarships, postgraduate training, training of technicians, exchange of scientific and technical informations, participation in the creation of research centers, laboratories; the agreements would exclude the forwarding of thusly acquired informations to third countries; the agreement would specify the agency representing the contracting parties in the implementation of the agreement (from Hungarian side this is generally an enterprise active in such fields, while on the other side usually a competent central state organ); the agreement – being a framework instrument only – would call for a working program in which the specified representatives would fix the details and conditions of the period to come.

The details and conditions fixed in the working program include normally the number and field of experts, consultants, trainees, the procedures of their recruitment and placement, the various cost-factors (travel, accomodation, food, medical care, salary, scholarship) and the financing party, payment conditions, customs exemptions; the working program, if not done so in the agreement, will of course name the agancies which on both side are responsible for the execution of the program, through which all steps are to be done, no matter from which institutions the experts are recruited or to which institutions they are placed.

21. Payment agreements are formally not very frequent in this relation. Substantially they exist, but are normally part of the general trade agreements. Especially as far as their main element is concerned: almost all commercial agreements declare that all payments are to be transacted in freely convertible currency. Other payment issues are covered by the relevant legal instrument (*e.g.* those concerning the just discussed experts and other persons participating in the technical-scientific assistance in the corresponding agreement or working program).

A special form of payment agreements is the clearing agreement. A rarely applied form. Those very few which exist with respect to developing countries either admit deals also with freely convertible currency or induce efforts to have a balanced purchase and sale structure, while at the very end the overdraft is of course settled by mutually acceptible means.

22. Loan agreements mean government loans – via government-authorized banks – extended to developing countries. These put the other side in a better purchase (import) position: the enterprises of this other side will buy easier, because their purchases are financed by such loans, although purchases must be transected from Hungarian exporter of course and generally with respect to specified goods or services. Therefore loan agreements are characteristically suitable to facilitate economic cooperation. Although they are beneficial both to the foreign and domestic enterprise (both can trade more than they probably could without such backing), and generally to both national economies, they still have a rational limit: the free loan-extending capacity of the one side, and the "debt-capacity" of the other side.

23. Agreements on individual big projects (constructions, turn key industrial investments) agreed upon and regulated in its details on intergovernmental level may also occur. Although the actual work will be done – as specified by the agreement – by concrete enterprises via commercial law channels (various forms of contracts), the intergovernmental agreement itself would go down deep into the substance of the actual undertaking. This will prefix the main elements of the enterprise level commercial contracts emanating therefrom.

If we would vizualize such agreements (also as having important leverage in the cooperation with developing countries), then we would see most likely the following elements (a picture taken from the author's contribution to the International Encyclopedia of Comparative Law, in which the respective subchapter deals also with this type of individual cooperation agreements): *a)* They are decided by the governments therefore no bureaucratic licensing procedure. *b)* Strong economic and financial stability. *c)* The macro and micro economic impacts of the individual project are taken care of, corresponding decisions are passed by the governments and given to the enterprises with all the beneficial effects sought for by the economy and society. *d)* The agreement specifies the main economic and financial elements of the project, sets or may set a concrete schedule for the execution of the various main phases and the project as a whole. *e)* It stipulates the main obligation of either party in the various phases and main elements of the execution process: drawings, specialists, technical assistance, summary list of equipment, summary list of the scope of construction work, data on the cost of the works, payment schedule of extended credit and repayment, etc. *f)* The calculation of payments, the applied currency, the adopted basis for the exchange rate in case of any change say in the gold parity of the currency in question. *g)* Language used throughout the cooperation. *h)* A very

important element of such an individual agreement is this basic position proclaimed: all this, and in the context of these obligations all the real operative work of execution (from the drawings up till the turn-key phase) has to be negotiated, contracted and done by the enterprises of the respective countries. The governments assume the obligation to authorize the enterprises to this end and inform each other thereof. It may also happen that the governments reserve the right to transfer their rights and liabilities arising from the agreement to such organizations of the respective countries they may consider necessary. *i)* As to the disputes – either between the governments or between the executing organizations – the governments assume the mutual obligation to consult immediately and to come to a mutual settlement of the issue. The governments have the right, if mutually accepted, to resort to any form of arbitration if the consultations prove not satisfying. Whether this solution is resorted to or not is a question of practice. The main idea, however, is good faith and mutual confidence in general and in the good outcome of consultations in particular. As to the executing enterprises they have of course all the legal vehicles of international arbitration.

iv. Domestic state level schemes promoting cooperation with developing countries

24. There are of course many state level domestic measures and schemes by which Hungary promotes cooperation with the developing countries. After all, the above discussed schemes are simultaneously domestic too, *viz.* in the meaning that thay are offered for use to the domestic partners too. Through them a corresponding and favorable condition system has been created for their cooperation transactions with partners also from the developing countries. Just one or two examples: the fact that by the relevant intergovernmental agreements payments are based on convertible currency, or that in certain relations government loans create easier chances for contracts, puts the domestic firms – in ratio to East-West transactions – really in an advantageous situation, and induces them into expanded actions in this direction. The whole political climate and positive attitude towards the developing countries should also result in efforts towards such orientation.

Then there are the various domestic schemes and rulings by which foreign trade is generally favored, thereby of course also that with the developing countries, *e.g.*: *e)* government loans for such domestic investments and development projects which – via modernized production technology – aim at better world market efficiency; *b)* the laws which admit and promote foreign acquisitions and other enterprise entities abroad (offices, joint ventures); *c)* laws and efforts made for the promotion of Hungarian nationals to work (as experts and in other capacities) abroad – to mention just a few from the many incentives which should activate enterprises towards deals with developing countries too.

25. If we look now for schemes which are directly and exclusively developing countries related, then two major institutions could be listed.

a) Customs preferences based on the GSP as encouraged and adopted by UNCTAD and GATT. The customs code and implementation rules on the Hungarian customs tariffs apply since 1972 preferencial suctoms to imports from developing countries under the generally known conditions (origin must be evidenced, the per capita GNP is not higher than in Hungary, no discrimination against Hungary and maintenance of normal commercial relations with Hungary). While the customs in these relations are generally lower than those applied to other countries (countries with mutual MFN-treatement), since several years 50% of all imports from the developing countries have been totally exempted from customs.

b) The sometimes weak purchasing or payment position of the partners from the developing countries call *inter alia* for credit sales (credit for sale granted by the seller). Hungarian firms too, of course, are interested in such sales, especially under the condition that domesticly their sales price will be credit-financed somehow so that they get to their income. The conditions created thereto (the rules, the amount to grant to the Hungarian corresponding party credit payment in forint, the procedures, the conditions varying according to the category of the actual developing country etc.) follow the principles applied in the OECD countries. Credit sales can be backed by bank guarantee in the buyer's country or elswhere. Thereby they may have the advantage that they can be independently marketed. The domestic regulation of credit sales has been complemented also by their possible domestic insurance (exporters with this payment procedure may buy corresponding insurance policies at the Hungarian insurance company, an insurance category not known earlier in the Hungarian insurance law). The "state level" in this credit sale structure consists, of course, in these indicated conditions of the regulation. Because otherwise – the outer, for that matter the real foreign trade side of the credit sale – is a sales deal of the two enterprises, accordingly an enterprise level category.

v. Enterprise level cooperation as the main stream of the actual transactions

26. The foreign trade policy of Hungary as state is substantiated by the transactions of the enterprises. In fact by the enterprises having foreign trade authorization, as defined by § 6 of the Foreign Trade Act. These enterprises are either foreign trade enterprises proper or other economic entities (industrial, commercial and other enterprises, companies, cooperatives) authorized to do also foreign trade. The number of all these enterprises is now around two hundred. All other economic entities are, of course, also encouraged to participate in foreign trade processes, but they have to act via enterprises with foreign trade rights (the forms are commision contracts, foreign trade associations etc).

All the governmental (state) level means discussed above aim finally at the realization of Hungary's foreign trade efforts by enterprise deals. The state as such would rarely figure in actual commercial transactions.

As to the scope of the legal forms or patterns used in the international contract practice of the Hungarian enterprises with regard to their cooperation with partners from the developing countries, – this is a vast complex system of all possible legal (civil or commercial law) instruments known all over the world. There is no need and space to describe them here. What is probably reasonable is this: first to list, based upon the Hungarian contract practice, the main contractual categories and other legal forms which are actually used with regard to developing countries; second to single out some problems, which impose themselves from the contract practice because of their special or general relevance; and thirdly to depict a complex contract category because of its particular role in the cooperation forms applied with regard to developing countries.

27. As to the panorama of the applied contracts and other patterns, we can see these major "participants" (either purely or in combined versions): sale, lease, commission, agency, license contracts (on patents, trademarks, know-how), labour contracts, sole distributorship, contracts for the service of the customers, contracts for the maintenance of consignment stores, carriage of goods, various forms of technical assistance or extension of technical expertise (civil engineering, engineering-consulting, technical management, training, feasibility studies, contracts for installation work etc.), comprehensive cooperation contracts generally as the framework for the delivery of big complex systems (turn key projects, which include such contract types as general contractor's contracts, *locatio conductio operis* or *Werkvertrag* in continental terminology, more concretely feasibility plans, civil engineering, construction, delivery of equipment, erection in site, licenses, installation, supervision, training etc.), similar projects on tripartite basis (*i.e.* jointly with Western firms and the participation of local firms as subcontractors), joint venture undertakings (mixed companies), enterprise offices.

To conclude this list two comments may be added. First: the Hungarian parties have full contract autonomy and are free to choose whichever of the said categories or their combinations, subject only to good faith and the general legal principles of contracting; they can shape their contract according to their economic interests as agreed upon in the contract-negotiations; it will do good if they include all major problems in the contract and leave as little space as possible for the (stipulated or not stipulated) proper law of the contract; this is especially the case in big turn key deliveries and company contracts. Second: the Hungarian parties are normally enterpises of substantial size, who have adequate legal service and expertise for the efficient use of the depicted legal machinery.

28. As evidenced by the contract practice of the Hungarian enterprises, there are many issues – somehow common to many or most of the contracts – which would deserve separate treatment. We discuss here some of them because of their general or particular relevance.

a) One of them is the law governing the contract. Although most contracts, especially those on big projects or long-term cooperation, give a very profound and detailed regulation of all contract-elements,

they still fall short of a sort of legal selfreliance. Commpletely selfregulatory contracts are theoretically conceivable but practically not viable. Let alone those many small-quantity or other contracts with less legal sophistication in which the regulation of too many problems would be disproportionate. Consequently, although the parties are free to define the elements and dispositions of their countract, and (also by virtue of the Hungarian Civil Code) these will be the priority governing rules in the case of dispute, norms for issues not covered by the contract must be taken from somewhere. Where from? In Hungarian law and contract practice we find these answers.

aa) The law stipulated for by the parties, is the first and perhaps overwhelming answer. Hungarian parties are completely free to take advantage of their party autonomy *(lex pro voluntate)*, to choose any law they prefer for their contract. § 24 of the Conflicts Code of 1979 declares unambigously that "contracts are governed by the law stipulated by the parties". And this choice is not depending on any condition (*e.g.*, that the stipulated law has to be in some relation to the actual conflicts case). Such or similar rules are practiced also in the developing countries.

What laws are really chosen by the parties? Many variations exist, from the *Schnitzerian* home trend of either party through Swiss law, till the law of the making of the contract or the law of a commodity trading exchange.

There are contract types – especially and of course the big project contracts – in which the parties from developing countries just would not (or hardly) admit any law other than their own. But there are also exceptions from under this tendency. Normally third country's (Swiss or other) law is chosen if it is a tripartite cooperation.

In sales contracts all kind of stipulations exist, *inter alia* also Hungarian law (in this case the Hungarian Civil Code applies as ordered by Law-Decree no. 8 of 1978 on the application of the CC, which covers also the law of commercial transactions). With regard to some commodities (coffee, cacao) English or Dutch law is stipulated due to the site of the exchange in question and the Rules in operation in the said field, given the circumstance that the Rules apply in harmony with the law of the (English or Dutch) seat of the exchange.

bb) In cases where there is no stipulated law, other variations come in. The major ones: First, unified law (international convention or other forms to this end, discussed above) where there is one in operation; it is very common that the contracts simply refer to such instruments and make them thereby part of the legal regime of the contract. Second, the law referrered to by the conflicts rule of the forum. The Hungarian rules for this case are fairly detailed and modern as regulated by the Conflicts Code (§ 25 – 31).

b) Jurisdiction is the other important legal element of almost all contracts. Enterprises are generally free to subject their legal dispute to any domestic or foreign ordinary or arbitration court. The Hungarian Conflicts Code adheres unequivocally to this principle (§ 62). As referred

to above Hungary adheres to the relevant arbitration conventions. Some bilateral agreements found this issue so important that they too carry clauses on the mutual recognition and enforcement of arbitral awards.

As regards jurisdiction in the contract practice actually the same tendency prevails as with regard to the applicable law: as a rule the local forum or local arbitration court of the buyer in big project cases; exceptionally and in other cases more variations (Arbitration Court of the ICC, as arbitration sites Zurich, Bern, London, Amsterdam, Budapest). It is an interesting observation that many contracts have real international dispute clauses by stipulating, *e.g.*, Swiss substantive law, the Arbitration Procedure Rules of the ICC in Paris, and London as seat of the tribunal; a Nigerian-Hungarian contract stipulates the ICC Rules, Zürich as seat, Swiss applicable substantive law, and admits simultaneously suits at the ordinary courts of the defendant's country, *i.e.* of Hungary or Nigeria; a Pakistani company contract stipulates an arbitration court in Karachi and Swiss substantive law; a contract with an Iraqi partner has a rotating arbitration court seat (at the seat of the defendant) but in any case with Iraqi substantive law.

By concluding one should emphasize that in fact there are not many legal disputes brought before courts. Enterprises find it difficult and expensive to find thereby their justice and interests satisfied. The answer is either a well constructed contract position by which the other party can be "held" to her obligation, or a normally good performance moral. If it still comes to a dispute, sometimes the interested party gives rather up (hoping for compensation through another deal), or if it is so far he would go all the way long as stipulated in the dispute clause.

c) In commercial transactions payments (forms, conditions) are the other side of the coin. They are of special interest here, because of two circumstances. First, because favorable payment conditions are really very often decisive preconditions of the coming into existence of contracts at all. Second, because some payment categories have their separate own life in the banking and insurance business, but with the ultimate function to play the catalyzer role for a better circulation of goods realized by the commercial transactions. With these assumptions, in the contract practice of the enterprises the following features of lthis "other side of the coin" can be briefly depicted.

aa) Payments are performed – as declared by the intergovernmental agreements discussed above and as evidenced by the enterprise practice – in freely convertible currency.

bb) Local non-convertible currencies are practiced as a rule only to the extent that local subcontractors participate in an undertaking and with regard to those costs of experts which emerge in the country of their activity.

cc) Clearing-channelled payment systems are very rare exceptions.

dd) The same applies to barter-contracts.

ee) Buy-back contracts occur, but their frequency is also very low.

ff) The most commonly frequented payment forms are the simple bank transfer, documentary credit, bill of exchange, and collection of commercial papers (as discused above: they come under unified law).

gg) From the from time to time applied payment conditions (also as conditions of coming into existence of some contracts at all) the government loan, banking loan, and sale on credit extended by the seller could be mentioned. As known, in these cases the payment is primarily realized not by the buyer's resources (he is credit-financed by the said structures, he must pay later, in a fixed period and procedure to his creditor).

Although these forms make deals easier possible, they run not without problems. Let us take the sale for credit granted by the seller. More conditions must coincide, requirements be met in order of its operation. The seller must be in the financial position to afford this credit sale (somehow financed from domestic credit sources, pass through the corresponding procedures to this end). He will surely require a bank guarantee from the buyer's country backing the buyer's obligation to fulfill his obligation when due. The guarantee may take the form of suretyship or documentary credit with deferred payment. The situation may become complicated if the buyer's bank does not pay, *e.g.*, because of actual or officially declared payment restrictions or *de facto* payment difficulties of the country in question, or because of socalled non-commercial (*i.e.* political) risks. An overguarantee from a third country's bank is not always viable. So the Hungarian seller sacrifices additional sums to insure the repayment of his extended credit. The insurance contract will be easily entered into with the Hungarian insurance company, but with substantial premiums to be paid by the insured Hungarian party and in addition with his substantial selfparticipation in the loss in any case *(Leloczky)*.

The payment by bills of exchange creates partly similar problems (*e.g.*, to have them overguaranteed by third country's bank suretyhips), no question also with similar advantages mentioned above. What they are favored for additionally is their independent marketability and the circumstance that they contribute to the foreign exchange reserves and money market mobility of the Hungarian banks.

29. As the last issue let us go a little bit into the depth of one contract-type; into one which is more characteristic than others in the chanelling of development-oriented economic cooperation with developing countries.

Among several others who are also characteristic in the efforts to increase thechnology and other knoweledge (all kind of technical and scientific assistance contracts), there is one legal pattern which probably conveys the most from those values the other party needs: industrial development, technology and economic management skill. These values are conveyed first of all by the delivery of turn key big projects with all the conveyed material or intellectual goods transferred thereby. Simultaneously they play an important catalyzer in the efforts for adequate modernisation of the Hungarian economy and export structure.

Fortunately, there are more and more such complex projects in the contract practice with the developing countries: constructions, slaughter houses, fluor mills, cold stores, concrete pole factories, big bakehouses, other factories or installations, and – also very characteristic in the efforts in this field – complete school systems. It should be mentioned that Hungary's enterprises – in connection with UNESCO – preferred projects – have important export deals in the development of the school systems of Peru, Brasil, Algeria, Nigeria, Libia, Siria, Iraq and Mexico. *E.g.* Hungarian enterprises have been active in the modern installation of 200 high schools, 20 universities in Peru, 80 polytechnical and medical schools in Brasil. The components of such deals are hardware (buildings, school equipment and educational appliances), software (educational computer programs, other educational means), and experts contributing to the realization and operation of such systems (see *Farkas*).

The said type of cooperation patterns are all detailed and comprehensive contracts. At the formation of such contracts the parties may (and do so) rely on the various models, conditions, legal regulations discussed above, but in their nature they are, nothwithstanding, the most self-regulatory. They are also very individual. Still – by consulting many – there are some basic elements which are common in all (or almost all), which represent the real hardware of such contracts. With the contract practice at hand let us visualize the most likely major elements of such contracts (channelling turn key industrial projects).

a) While the Hungarian party is an enterprise with foreign trade authorization, on the other side contracts are occasionally co-signed by *sui generis* state agencies (a ministry, *e.g.*). The most contracts are bilateral deals, but the number of tripartite undertakings is increasing (just some examples: between 1971 and 1976 two Hungarian firms have delivered jointly with two Italian firms 12 gasturbine powerstations to Turkey, 2 to Dubai, 3 Libia, a big Hungarian agricultural combine is delivering in cooperation with western firms more than 10 poultry-breeding and egg-producing plants to developing countries, other Hungarian firms concluded a contract with a big English company to deliver turn key sewage treatement systems into developing countries; the list could be continued and the chances-combined challenge is growing, see more details for the Hungarian practice in *Geiszt – Ravasz*).

If on either side there are more subcontractors (contributors) in the deal, the contract would name the responsible party who acts on behalf of the buyer and the seller, who carries all liability vis-a-vis each other.

b) The (bilateral and tripartite) contracts are concluded against the background of the governmental trade or economic cooperation agreements and the suggestions of the mixed commissions set up by thse agreements (*supra* iii). The contracts claim the benefits extended by these said agreements, *inter alia*, also with regard to the licensing procedure.

c) The subject-matter of the contract (as the obligation of the seller) comprises a broad field of goods, activities and services, depending on the actual deal, such as: feasibility study; the design and the carrying out of

all civil engineering works concerning the project; erection; completition on site with the machines and equipments supplied by the seller and by contributions of the buyer and other subcontractors as provided for in the contract; the design and completition must provide the stipulated dimensions by which the project (factory) will be able to produce the required annual output with the defined quality; to this end the project is expected to operate with the stipulated technology; the fulfillment of the obligations include furthermore technical supervision, making the works ready for normal operation, test-runs and qualification runs; all parts and works and tooling necessary for the safe and efficient operation.

d) Licence transfer (patents, management skill, know-how) is very essential: they guarantee the up-to-date standard. The buyer must receive the whole documentation. The contract would stipulate the license restrictions imposed on the buyer as to their (the licenses') sale or disclousare to third parties. Also would it provide for the conditions under which the seller will eventually complete the installed technology with additional innovations.

e) Technical assistance is also very essential (beyond that materializing in the above goods and activites). This normally includes training of personnel either on site or abroad or both. Very detailed specifications and conditions are normally formulated to this end.

f) The contract will set detailed conditions as regards the buyer's (or seller's) obligations concerning such items as site facilities, water and energy supply, sanitary measures, telephone service, living quarters for the seller's staff etc.

g) The supply of spare parts will be required by the contract, spare parts necessary for a certain period's normal operation. The seller may extend an option (commitment to conclude a spare parts contract) for a more years period.

h) The contract will contain a detailed schedule and timing of the realization of the whole project.

i) Warranty provisions are meant to put the buyer in the position to require really latest design, technology and quality. To this end the respective provisions will athorize him to claim fast and efficient repairs, replacements or compensation.

j) Big projects are subject to certain vital inspections such as test-runs, qualification runs, quality acceptance etc., and this must be laid down in mutually acceptable writings, *i.e.* certificates as preconditions of the payment actions, to say the least. Therefore the contract will define the required certificates, their procedure and effects.

k) The contract can not avoid to deal with such issues as insurance, taxes, customs by defining who carries what costs and obligations in these matters.

l) To pay the price is of course the major obligation of the buyer. As to the pricing itself: they are world prices under competitive conditions. This has been claimed by the intergovernmental agreements and this is evidenced also by the contract practice. It is a fairly justified observation

(also in the tender-decisions and pricing) that either in the offical trade policy or in the contract practice generally no developing country is discriminating against Hungary, neither do they extend any preferences; deals are entered into and based on prices as conditioned by commercial conditions of the market.

Payment forms and related conditions have been discussed above separately. In addition to that one more remark is justified: the contract will fix a detailed scheduling of advance, installment and complete or final payment with regard to every distingnishable delivery or performance, so that both parties reamain or get in balanced bargaining position for the case "if anything happens".

m) Finally there are two specially important legal elements in the contract: force majeur type hardships and frustrations on the one hand, and legal disputes one the other hand. As to the legal disputes, they have been treated above.

Force majeur type hardships are real dangers in any long-term deal. This must be taken in consideration, *i.e.*, the contract itself should be a means to cure the consequences of such dangers, to make the parties adapt their mutual interests to the changed situation and save the undertaking channelled by the contract. This is the function of the socalled hardship or intervener clauses, *salvatorische Klausel* in the expressive German terminology.

In the contract practice the force majeur type of dangers include not only Acts of God (natural catastrophies), but *inter alia* such noncommercial phenomena as war, hostilities, civil war, riots, insurrections, mobilisation, blockades, explosions, prolonged failure of electric current from outside sources, — to mention the major circumstances who are considered as bieng beyond the control of any party.

The obligation of the party is fast notification of the other party (some times by evidencing written certificates of competent public organs).

The consequences are varyingly regulated.

No liability for the losses caused by the circumstance in question. Frustration of the whole deal is surely the extreme case. Frustration of partial deliveries, delay in the performance can and will be exonerated. Both parties will be entitled for extension time to meet their obligations, and this time is not thought to exceed the duration time of the force majeur. If the duration of a force majeur-a force majeur in the said broad meaning- exceeds a "rationally" long time, the *salvatorische Klausel* will probably call for negotiations in good faith and endeavour to agree upon an appropriate course of action. This means an adaption procedure, an agreement to negotiate without casting the obligation on the parties to reach a definite agreement. In all likelihood, economic facts of life will compell them to agree at least as efficiently as such general legal obligations as the said clauses "to endeavour to agree upon an appropriate course of action".

III. Issues and difficulties calling for better perspectives

30. Evidently, there are many problems and difficulties in the realization of the objective need to develop Hungarian economic cooperation with the developing countries more substantially. Some of them have been addressed above in the respective context.

a) It goes without saying that better political conditions are most desirable. Political instability in some parts of the third world, wars create real difficulties in the cooperation process (quite down to such technical problems as frustration of concluded contracts, or more expensive transport costs, delay and connected damages of deliveries etc.). A better political climate in East – West relation would surely contribute to a more efficient cooperation between the developed and the developing countries in general. Concerted actions would bring more also with regard to the justified demands of the developing countries for values and benefits expressed also in the main elements of the new world economic order. Again, this would go down also to such "technicalities" as, *e.g.*, to come to more contrete and efficient agreements in the various UNCTAD-programs too.

b) Geographic distances by themselves are often handicapping factors (to refer only to the high transport costs). Modern means of transportation and less carriagedemanding forms may help (to produce on spot by joint ventures, to push better various forms of technical assistance etc.).

c) Payment difficulties and restricted access to credits are detrimental economic factors. More real understanding – meaning a really effective and "generous" financial policy – would be needed.

d) Another problem is the still not satisfyingly advanced stage of the GSP measures in many conntries. Developed countries should buy more from those developing countries too, who don't have oil or other easy going economy – "curing" export goods.

e) To encourage Hungarian investments and other projects calls for more information and knowledge on the economic and legal environment in the different developing countries and vice-versa. Hungarian public institutions and the enterprises should do much more to build up up-to-date information on the Hungarian export-capacity in various fields, especially on faculties by which Hungarian industires and products would fit beneficially into well-considered needs and plans of the developing countries. A vital coundition: exported Hungarian machines, technology and other goods should be of inviting standard and satisfaction. This would attract more attention and deals, among others also at Western firms to go into tripartite ventures. Tripartite ventures have the advantage that they substantiate good cooperation between East and West and South in general, and a standard-increasing enterprise level cooperation in the given projet in particular. This in turn produces its economic and psychologic benefits at the developing partners (namely that they are exposed not only either to socialist or to capitalist "influence" but benefit from both).

f) Tripartite deals are the more favorable, because most socialist countries have modest magnitudes only of the goods and quantities the developing countries need, so they are inclined – also by this very reason – to go to developed Western countries or to Japan. By trilateral cooperation this gap can be filled at least partly.

g) Import and investment restrictions should be liberalized as much as possible to encourage capital and technology transfer. Capital and technology transfer could be surely supported by special insurance schemes of the exporting countries and by bilateral agreements on the protection of invested property.

h) The foreign trade organization structure of most countries is substantially different, *e.g.*, from that of Hungary (for example Hungarian enterprises most deal very often with ministries or other direct state organs as parthers). Hungarian enterprises must do more to adapt themselves to different organizational structures and attitudes. The circumstance for instance that in many partner countries no commercial agents can be operated, makes the Hungarian parties to act correspondingly. While in other countries agents are a vital part of the market organization of the Hungarian exporters, here they must act differently, *i.e.*, either with the help of their own accredited offices or with the cooperation of the other (local) party directly.

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FORMEN DER WIRTSCHAFTLICHEN KOOPERATION ZWISCHEN UNGARN UND DER ENTWICKLUNGSLÄNDER

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Der Aufsatz beschreibt zunächst die prinzipiellen Grundlagen und wirtschaftspolitischen Beweggründe, sowie die faktische (wirtschaftsstatistische) Lage der Kooperation. Im zweiten Teil werden die verschiedenen angewandten juristischen Formen und Institutionen analisiert: Jene auf der Staatsebene, wie z.B. die verschiedenen multilateralen und bilateralen Abkommen, besonders die allgemeinen und individuellen Kooperationsabkommen, und abschliessend auf dieser Ebene die inneren ungarischen juristischen Formen und andere Massnahmen zur Förderung der Zusammenarbeit; ein wesentlicher Teil der Arbeit befasst sich dann mit der Struktur der Zusammenarbeitsformen auf Betriebsebene. Abschliessend wird auf die Fragen der Weiterentwicklung eingegangen.

ВОПРОСЫ ЯКОНОМИЧЕСКОГО СОТРЦДНИЧЕСТВА МЕЖДУ ВЕНГРИЕ′ И РАЗВИВАЮЩИМИСЯ СТРАНАМЫ

ФЕРЕНЦ МАДЛ

(Резюме)

Статья состоит из трёх частей. I. Принципальные, экономическо-политические основы сотрудничества и фактическое образование до сих пор. II. Примененные формы и юридические устройства: формы государственного уровня (как например многосторонние и двухсторонние договоры, общие и индивидуальные кооперационные договоры, внутренние государственные устройства и распоряжения), связи на уровне предприятий. III. Вопросы дальнейшего развития связей.